

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summons for Judgment No. 80 of 2005
in
Summary Suit No. 3629 of 2004

Neera Ashok Jain ..Plaintiff

vs.

Gaurang V.Doshi ..Defendant

Ms.Kavita Shah i/b Mr.A.G.Shah for plaintiff
Mr.S.H.Karim for defendant.

**CORAM: S.J.VAZIFDAR J.
21st NOVEMBER, 2005**

P.C.

. The suit is filed to recover the amount lent and advanced by the plaintiff to the defendant.

2. The fact that the amount of Rs.15,50,000/- was advanced by the plaintiff to the defendant was admitted. The defendant faced certain financial difficulties and was, therefore, unable to repay the amount. He has stated so in his letter dated 14th January, 1998. In that letter he has also stated that he desired to repay the amount with interest at the rate of 18% p.a. and forwarded the post dated cheques for the same.

3. By further letter dated 28th October, 1998 the defendant once again recorded his inability to

repay the amount. The defendant forwarded under the cover of that letter a cheque for the consolidated amount of Rs.15,50,000/- in lieu of the earlier post dated cheque. He also recorded his inability to pay interest for the earlier period. By the said letter he agreed to pay simple interest at 18% p.a. on the said amount.

4. By further letter dated 25th November, 1999, defendant once again recorded his inability to pay the amount and confirmed that the plaintiff had returned the cheque dated 30th April, 1999 and forwarded the fresh cheque dated 30th June, 2001 for the said amount of Rs.15,50,000/- The defendant agreed to pay interest at the rate of 18% p.a.

5. Finally the defendant by letter dated 6th December, 2001 recorded that the plaintiff had returned the cheque dated 30th June, 2001 and he further forwarded a fresh cheque dated 30th June, 2002 for Rs.15,50,000/- and agreed to pay interest as stated herein.

6. Although I am not totally convinced about the defence regarding interest I am inclined to grant unconditional leave so far as interest is concerned. It is not necessary, therefore, to deal with this aspect any further.

7. As far as the principal amount of Rs.15,50,000/- is concerned there is no defence whatsoever. The defendant admits having received the amount. The defendant's case is that one Mr.Munir Gazi, the plaintiff and the defendant held a meeting wherein it was agreed that the said Mr.Munir Gazi would take over defendant's liability. This is alleged to be an oral agreement. There is nothing on record to even remotely suggest that the said agreement was entered into. Mr.Munir Gazi has not even filed an affidavit. It is not the defendant's case that Mr.Munir Gazi in fact made repayment as alleged. Such an agreement, if true, would certainly have been reduced to writing or would have been evidenced in some manner.

8. It was alleged that the plaintiff is a money lender. Apart from the bare statements there is no evidence to establish the same. In the circumstances, summons for judgment is made absolute and the suit is decreed in the sum of Rs.15,50,000/- together with interest thereon at the rate of 18% p.a. from the date of filing of the suit till payment and/or realisation.

9. The defendant is granted unconditional leave to

defend in respect of the balance claim in respect whereof the suit is transferred to the list of commercial causes.

10. The defendant to file his written statement within four weeks from today.

11. Discovery and inspection to be completed within six weeks thereafter.

12. Summons for judgment stands disposed of accordingly.